



# JOURNAL

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JUDICIAL COUNCIL OF CALIFORNIA ♦ ADMINISTRATIVE OFFICE OF THE COURTS  
COUNCIL AND LEGAL SERVICES DIVISION ♦ OFFICE OF THE GENERAL COUNSEL



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Judicial Council of California  
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415-865-7739  
fax: 415-865-4319  
e-mail: [childlaw@jud.ca.gov](mailto:childlaw@jud.ca.gov)

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## MISSION STATEMENT

The *Journal of the Center for Children and the Courts* is a periodical dedicated to publishing a full spectrum of viewpoints on issues regarding children, families, and the interplay between these parties and the courts. Focusing on issues of national importance, the journal encourages a dialogue for improving judicial policy in California.

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## Editor's Note

The Judicial Council of California is pleased to present the first issue of the *Journal of the Center for Children and the Courts*. The Center has been dedicated to the task of improving court proceedings involving children and families since its inception in 1997. The creation of the journal was one of the first tasks undertaken by the Center to achieve this goal. The journal was conceived to provide information concerning children and families in the California court system in a scholarly and educational format. Although focusing on issues of national importance, the journal encourages a dialogue for improving judicial policy in California.

The journal's editorial board is composed of a distinguished group of judges, academics, attorneys, and others from across the United States interested in improving court proceedings for children and families. The journal will be published annually, with each issue addressing a specific area within the judicial process affecting children and families.

### **This issue examines representation of children in its broadest sense.**

This issue examines representation of children in its broadest sense. Representation of children affects children in all types of court proceedings, whether the child is in dependency court, the subject of a custody dispute, the victim in a criminal matter, or the alleged perpetrator of a crime. Representation is also a timely subject. Recently the American Bar Association, the American Academy of Matrimonial Lawyers, and Fordham Law School devoted time and resources to develop representation standards or hold a symposium on the subject.

To gain a greater understanding of the various facets involved in the representation of children, the journal has compiled articles from a variety of people who have participated in the process, from attorneys and judges to children who have experienced the system. The articles address such topics as funding, the role of attorneys (both as advocates and prosecutors), and the historical development of children's representation.

First, to shed some light on the child's perspective, former foster child Johnny Madrid relates his personal experience in the courts and offers suggestions on how to better the process. Next, Donald C. Bross addresses the evolutionary development of independent representation. William Wesley Patton analyzes the role of children's counsel in dependency cases, and Jennifer Walter discusses the dynamics and future outlook of independent representation for children in the courts. Michael S. Piraino and Meghan Scahill assess the roles of other key participants in dependency proceedings: Court Appointed Special Advocates and prosecuting attorneys.

We next turn to Jan C. Costello, who addresses the unique issues that arise from proceedings involving children with mental disabilities. Finally, Comm. Josanna Berkow analyzes the responsibilities of lawyers who are representing children in family court.

The second section of the journal is a forum for addressing important and timely issues that are relevant to children and families in the court system but fall outside the focus topic of representation. In this issue Barbara Kaban and Ann E. Tobey consider the challenges of preserving constitutional rights when police interview children. Stephen P. Herman focuses on child custody evaluations and how to maintain standards for those evaluating children, while Judge Donna Petre examines the coordination of the proceedings involving children and families in order to create a unified family court. Finally, in the Perspectives section of the journal, Judge Steven J. Howell offers his experience as a judge in a coordinated family court, and Amariche Hawkins contributes his perspective as a foster child in the system.

We hope that this journal offers provoking perspectives while serving as a useful information and research tool. We look forward to continuing this important endeavor and welcome your comments and suggestions for improvement.



—Audrey Evje

# Contributors

**Hon. Josanna Berkow** has served as a commissioner in the Superior Court of California, County of Contra Costa for over six years. She hears cases involving child custody and visitation, child and spousal support, division of marital property and debts, and domestic violence. Before taking the bench, Commissioner Berkow was a California deputy attorney general handling both criminal and family law appeals. The Attorney General appointed her statewide coordinator for child support and child abduction in 1987. Commissioner Berkow has also worked as a prosecutor and hearing officer for the federal labor relations authority and as staff counsel for U.S. Senator Paul Sarbanes (D-Md.).

**Donald C. Bross** is a professor of pediatrics (family law) at the University of Colorado School of Medicine, and director of Education and Legal Counsel for the C. Henry Kempe National Center for the Prevention and Treatment of Child Abuse and Neglect. Since being appointed to the faculty in 1976, he has represented maltreated children in court, drafted child protection legislation, and helped establish the National Association of Counsel for Children. He works clinically with the Children's Hospital/UCHSC Child Protection Team, the State and Regional Team Against Crimes on Children, and the Clinical Resource Center on Child Abuse. He has published on the law and ethics of child advocacy, child development and the law, confidentiality, medical care neglect, perinatal drug exposure, termination of the parent-child legal relationship, medical documentation for court, evidence of child abuse or neglect, and treatment of child abuse and neglect.

**Jan C. Costello** is a professor of law at Loyola Law School, Los Angeles. She teaches and writes in the areas of children and the law, mental disability law, and family law. She received her B.A., M.A., and J.D. from Yale University and, before joining the Loyola faculty in 1983, practiced public-interest law for seven years, representing children in the juvenile justice system and people with mental disabilities. She was chair of the State Bar of California Standing Committee on Legal Rights of Disabled Persons from 1983 to 1987, and chair of the Association of American Law Schools Section on Law and Mental Disability from 1989 to 1990. She sits on the boards of Mental Health Advocacy Services, Inc., and the Western Law Center for Disability Rights.

**Amariche Hawkins** is a former foster child who knows firsthand the difficulties of growing up as a dependent of the court. Despite the lack of positive role models and feelings of insecurity and degradation, Hawkins managed to locate mentors who helped him set priorities in his life and gain a sense of responsibility for his future. He is currently attending Grambling State University, where he plans to study criminal justice and also play football.

**Stephen P. Herman** is an associate clinical professor of psychiatry at the Mount Sinai Medical Center in New York City. He specializes in forensic child and adolescent psychiatry and practices in New York and Connecticut. He is board certified in forensic psychiatry. He is the principal author of *Practice Parameters for Child Custody Evaluation*, published by the American Academy of Child and Adolescent Psychiatry, and the author of *Parent vs. Parent—How You and Your Child Can Survive the Custody Battle* (Pantheon 1990).

**Hon. Steven J. Howell** has been a judge in Butte County since 1987. Originally appointed to the municipal court, he was elevated to Butte County's superior court in 1996. He is a past member of the Judicial Council of California (1993–1996). He currently is the juvenile judge for Butte County and has presided over the Butte County unified family court since June 1998. He has been active in launching and participating in H.O.P.E. (Helping Organize Parents Effectively), Butte County's unified family court program.

**Barbara Kaban** is a staff attorney at the Children's Law Center in Massachusetts. Most recently she was a recipient of a 1998 Soros Justice Fellowship. Ms. Kaban graduated *magna cum laude* from Boston College Law School and has an M.B.A. degree from Boston University and an M.Ed. degree in educational psychology from Harvard University. Ms. Kaban provides direct representation to children and youth in delinquency, Children in Need of Supervision (CHINS), and educational matters. She has coauthored three books in developmental psychology, authored a book on the selection of developmentally appropriate toys for children, and published over a dozen articles in newspapers and magazines such as the *New York Times* and *Harvard Magazine*.

**Johnny Madrid** began his seven-year odyssey in foster care at age 10 with his mother's death in a car accident. He has lived in 19 different Los Angeles-area homes (both in and out of foster care), both "the worst . . . and one of the best (the last one)." This year he graduated *magna cum laude* from Notre Dame High School, where he received the Cardinal Manning School Service Award and "Man of the Year" Award. He is now attending Stanford University and hopes to become a lawyer in public service. Madrid is an active member of the California Youth Connection.

California Youth Connection (CYC) is a unique nonprofit advocacy organization for foster youth that is built on the principles of youth empowerment. The CYC strives to improve the foster-care system by creating a voice for youth who are, or have been, the true "consumers" of our child welfare services. CYC works on the state and local level to educate legislators and policymakers about how policies and programs actually affect children. If you would like more information about California Youth Connection, please call the statewide office at 800-397-8236.

**William Wesley Patton** is a professor of law at Whittier Law School, where he has served as the director of the Center for Children's Rights since its inception in 1995. Professor Patton teaches juvenile law and juvenile trial advocacy. Prior to teaching at Whittier Law School, Professor Patton served as a state public defender, specializing in representing juveniles in the California appellate courts. During his four years of teaching at University of California, Los Angeles School of Law, he supervised students who represented parents in the Los Angeles dependency courts. He has spoken on the child dependency system at numerous annual meetings of the Association of American Law Schools (AALS), at the Annual AALS Clinical Conference, and at the Los Angeles Dependency Court annual conference, *A New Beginning for Partnerships for Children & Families in Los Angeles County*.

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## *Contributors, continued*

**Hon. Donna M. Petre** was appointed in 1989 to the Superior Court of California, County of Yolo. She has been nationally recognized for her court innovations, including an award from the Foundation for Improvement of Justice, Atlanta, Georgia. Judge Petre was recently recognized by the California Legislature as “Woman of the Year” for the 4th District and the recipient of a Kleps Award from the Chief Justice of California. After graduating from Hastings Law School in 1976, she worked as deputy attorney general in San Francisco and Sacramento. In 1999 she was appointed to the Judicial Council’s Family and Juvenile Law Advisory Committee. She is co-presiding judge of Yolo County’s unified family court.

**Michael S. Piraino** has been chief executive officer of the National Court Appointed Special Advocate Association for four years. In addition to teaching and practicing law, he has been a guardian ad litem for children, a consultant to international child advocacy organizations, and a staff member of the National Center for Children in Poverty at Columbia University. He has authored several publications and is a frequent speaker on children’s issues.

**Meghan Scahill** is a research assistant for the National Center for Juvenile Justice, where she is responsible for authoring reports on topics in juvenile justice and child welfare and provides research assistance for other projects conducted by the center. She graduated from the University of Pittsburgh School of Law after earning a B.A. in anthropology and sociology from the State University of New York (SUNY) at Buffalo.

**Ann E. Tobey** is a clinical psychologist who obtained her B.S. from the University of Alaska at Fairbanks and her Ph.D. from the State University of New York at Buffalo, where she conducted research with Dr. Gail Goodwin on children’s memory and suggestibility in legal contexts. Dr. Tobey completed a one-year postdoctoral fellowship at the Massachusetts General Hospital/Harvard Medical School’s Children and the Law Program. She is currently the staff psychologist at the Roxbury Defender’s Youth Advocacy Project, an innovative program that focuses on a contextual approach to representing youth in the juvenile justice system. Dr. Tobey is also a clinician at the Children’s Charter, Inc., where she conducts forensic evaluations involving matters of custody, visitation, and parental fitness. Her most recent publication stemmed from research on juvenile trial competence conducted with the MacArthur Foundation’s Program on Juvenile Justice.

**Jennifer Walter** is supervising attorney of juvenile projects at the Center for Children and the Courts, Judicial Council of California. Before joining the Center, she was directing attorney of Legal Advocates for Children and Youth, a nonprofit law office in San Jose, California, providing free legal services to children in Santa Clara County. She began her legal career as staff attorney at Legal Services for Children in San Francisco. She also serves on the State Bar of California’s Committee on Justice for Children. Ms. Walter received her law degree from the University of San Francisco Law School and her bachelor’s degree in linguistics from the University of California at Berkeley.

## REPRESENTATION OF CHILDREN



*Photograph by Jonathan Alcorn*

